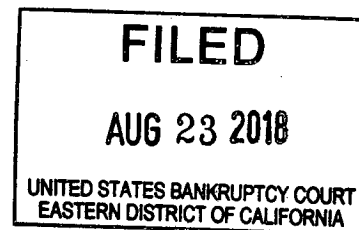


BRES



UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re) Case No. 16-21585-A-11
AIAD SAMUEL and HODA SAMUEL,)
Debtors.)

MEMORANDUM

On August 20, 2018, debtor Aiad Samuel filed a motion to recuse Judge McManus. Docket 1159. This is the second such motion filed by Mr. Samuel.

The first motion was filed on July 17, 2017 and was disposed by the court, along with a separate recusal motion by debtor Hoda Samuel, in an August 20 Memorandum. See Dockets 1121, 1122, 1123, 1148.

///

///

///

I

While this motion is directed to the chief judge of this court, it is the challenged judge who must decide a recusal motion. See 28 U.S.C. § 455; Schurz Communications, Inc. v. FCC, 982 F.2d 1057, 1059, 1062 (7th Cir. 1992) (chambers opinion) (Circuit Judge Posner considering and denying a request for his disqualification pursuant to section 455); United States v. Dennis, Case No. 2:10-CR-00091-KJD-GWF, 2016 WL 4925915, at *1 (D. Nev., Sept. 14, 2016).

In this case, the recusal motion concerns Judge McManus. Thus, 28 U.S.C. § 455 requires Judge McManus to decide the motion.

Nevertheless, this and the prior motions have been brought to the attention of Chief Judge Ronald Sargis so he may determine for himself whether he is required to adjudicate the issue of Judge McManus' recusal.

II

This motion, except for the several issues addressed below, largely repeats issues raised in the prior recusal motions. Those issues are addressed in the court's earlier Memorandum, which is incorporated here by reference. Docket 1148.

The new issues raised by Mr. Samuel do not show a bias or prejudice against the debtors or in favor of another warranting recusal. Nor do the newly raised issues provide some other basis for disqualification of Judge McManus.

///

///

1 A

2 Mr. Samuel complains that the court has not allowed him to
3 discharge attorney Richard Jare and to retain another attorney.
4 This is not true.

5 Until Mr. Samuel's July 17 prior motion to disqualify the
6 court was filed, no motion had been filed to discharge Mr. Jare
7 as counsel for Mr. Samuel. On page 4 of the July 17 motion, Mr.
8 Samuel asks to discharge Mr. Jare. Docket 1121 at 4. He also
9 makes the request in an objection to the trustee's proposed plan
10 of reorganization. See Docket 1137.

11 However, until it dealt with the first two recusal motions,
12 the court could not act on any other pending motions in the case.
13 See Dockets 1121, 1122, 1123. That is why the court set an
14 August 28 hearing on the other relief requested in the first two
15 recusal motions and on the confirmation of the plan. The
16 question of Mr. Jare's discharge as attorney would have been
17 taken up at that time.

18 On August 20, however, the same day Mr. Samuel filed his
19 second recusal motion, Mr. Jare filed a document titled "Attorney
20 Richard Jare's Statement," giving his consent to be discharged as
21 counsel for Mr. Samuel. Docket 1169.

22 Given Mr. Samuel's demand and Mr. Jare's statement, once the
23 court has ruled on this recusal motion, it will enter an order
24 relieving Mr. Jare of his responsibilities as counsel for Mr.
25 Samuel and substituting Mr. Samuel as his own counsel.

26 It must also be mentioned that because the debtors were
27 removed as debtors in possession, they have never needed this
28 court's permission to retain attorneys to represent their

1 interests. Only professionals employed by the bankruptcy estate
2 must have their employment approved. See 11 U.S.C. § 327(a).

3 Nor do the debtors need this court's permission to discharge
4 an attorney, although it is incumbent on the attorney to file a
5 motion pursuant to Local Bankruptcy Rule 2017-1(e) if the
6 attorney's withdrawal will leave the client without an attorney.
7 This is to protect the client and ensure such things as the return
8 of the client's property and records.

9 The debtors in this case seem to have appreciated that it is
10 their prerogative to hire and fire attorneys.

11 For instance, the debtors retained attorney Edward Smith to
12 prosecute a motion to reinstate them as debtors in possession.
13 Mr. Smith declined to go forward with this representation because
14 the debtors did not give him the records he needed to seek their
15 reinstatement. Dockets 78 & 137; Docket 1148 at 9.

16 Mr. Samuel discharged Mr. Smith and retained Mr. Jare.
17 Docket 234. As to Mrs. Samuel, the court granted Mr. Smith's
18 motion pursuant to Local Bankruptcy Rule 2017-1(e) to be relieved
19 as her counsel. Docket 710.

20 Mrs. Samuel later retained attorneys Patricia Miller and
21 Lisa Jackson to represent her for short periods of time. See,
22 e.g., Dockets 581, 692, 696, 713, 728, 853, 860, 898.

23 Finally, even when both debtors were represented by counsel,
24 the court nonetheless considered their many motions and responses
25 to motions filed without the assistance of their attorneys. And,
26 as recently as August 20, at a hearing on the trustee's cash
27 collateral motion, the court permitted Mr. Samuel to present his
28 own opposition because Mr. Jare was not present. See Dockets

1 1161 & 1166.

3 **B**

4 Mr. Samuel complains that the court has deprived him of the
5 financial ability to retain counsel by appointing a trustee to
6 take charge of the bankruptcy estate.

7 The court appointed a trustee because the debtors used cash
8 collateral without court or creditor permission, failed to
9 disclose all financial information in the bankruptcy schedules
10 and statements, and failed to open a debtor in possession bank
11 account as required by Local Bankruptcy Rule 2015-2(a). See
12 Docket 1148 at 7-8.

13 While the appointment of the trustee placed the property of
14 the estate in the hands of the trustee, the trustee has not
15 prevented the debtors from using Mr. Samuel's employment income
16 or their substantial retirement accounts (which total
17 approximately \$1,895,000 according to amended Schedule C filed
18 January 23, 2018) to retain attorneys or for any other purpose.

19 And, the record shows that the debtors have not lacked the
20 will or the resources to retain attorneys in this case. As
21 outlined above, the debtors have used several attorneys thus far.
22 Mr. Jare, Mr. Samuel's most recent attorney, also states that Mr.
23 Samuel has the funds to "well afford to hire a different
24 attorney." Docket 1169 at 2. Also, Mr. Samuel has been
25 conferring with other attorneys in the district, such as attorney
26 Mark Wolff. Docket 1169 at 2.

27 But, even if the appointment of the trustee meant that the
28 debtors could not afford an attorney, the court did not appoint a

1 trustee in order to prevent the debtors from retaining one. A
2 trustee was appointed because the debtors had shown themselves to
3 be poor stewards of the bankruptcy estate.

4
5 **C**

6 Mr. Samuel complains that the court has denied him the
7 opportunity to amend his bankruptcy schedules.

8 The obligation to prepare and file bankruptcy schedules and
9 statements, and accurately disclose information in them, has
10 always been on the debtors. See 11 U.S.C. § 521(a). As
11 discussed in the court's August 20 Memorandum, the debtors have
12 never needed permission from the court to amend their schedules
13 and statements in order to fulfill their reporting and disclosure
14 obligations. Docket 1148 at 19; Fed. R. Bankr. P. 1009(a). And,
15 the court has not entered any order preventing the debtors from
16 amending the schedules or statements.

17 Mr. Samuel notes also that the trustee has not filed amended
18 schedules. Nothing in the Bankruptcy Code or Federal Rules of
19 Bankruptcy Procedure, however, requires the trustee to amend the
20 debtors' bankruptcy schedules or statements. Nor has the court
21 required the trustee to amend the schedules or statements. See
22 Fed. R. Bankr. P. 1007(k) (providing that the court *may* order the
23 trustee to prepare and file schedules).

24
25 **D**

26 Mr. Samuel asserts that the trustee offered \$2 million to
27 the debtors to withdraw their objections to "the Trustee's
28 activities."

1 This allegation has not previously been made, much less
2 substantiated. The court assumes it will be made in connection
3 with the motion to remove the trustee and it will be dealt with
4 in that context.

5 In the meantime, it is not a basis for recusal of the court.
6

7 **F**

8 Mr. Samuel complains that "[t]here was never an accounting
9 made to the Court as to the suspicious nature of a fire and water
10 damage from one of Petitioner's properties."

11 The court does not recall anything, and it sees nothing in
12 the record, indicating that there was a fire at one of the
13 properties administered by the trustee.

14 There was water damage at the Rio Linda shopping center
15 property caused when the fire suppression sprinkler system was
16 triggered. A sensor failed and water collected in a portion of
17 the property causing significant water damage. The court does
18 not recall that the reason the sprinkler system activated was
19 ever established. Docket 826.

20 The court also does not understand what Mr. Samuel means by
21 an "accounting" of the damage. After the flooding at the Rio
22 Linda shopping center, the trustee filed a motion to authorize a
23 plan to abate, clean up, and repair the damage caused by the
24 water, and to settle the claim with the insurance company. The
25 court granted the motion. Dockets 826, 839, 844.

26 In his motion, the trustee revealed the damage, the amount
27 of available insurance, and the cost of abatement, cleanup,
28 repairs, and rebuilding. In its order, the court approved the

1 trustee's plan to repair the damage.

2 In addition, the trustee has been filing operating reports,
3 reporting the finances of the estate, on a monthly basis, since
4 his appointment. See, e.g., Dockets 771, 804, 806, 817, 861,
5 904, 922.

6 To the extent Mr. Samuel is complaining about the court's
7 disposition of the trustee's motion to deal with the water
8 damage, this is not a basis for recusal. Adverse rulings alone
9 are not grounds for disqualification of a judge. Liteky v.
10 United States, 510 U.S. 540, 555 (1994); U.S. Trustee v. Lebbos
11 (In re Lebbos), 439 B.R. 154, 162 (E.D. Cal. 2010), aff'd, 529 F.
12 App'x 854 (9th Cir. 2013).

13 To the extent Mr. Samuel maintains that the trustee is
14 somehow responsible for the water damage or has not accounted for
15 insurance proceeds, the court will consider this in connection
16 with the motion to remove the trustee if raised by Mr. Samuel.

17
18 **G**

19 Mr. Samuel complains that the court has "disregarded or
20 ignored the apparent conversion of hundreds of thousands of
21 dollars in business equipment belonging to the Petitioner that
22 was acquired by the Trustee, which has never been accounted for."

23 However, Mr. Samuel does not identify this equipment, where
24 it was located, and his basis for claiming that it was converted
25 or acquired by the trustee. Mr. Samuel also says that this was
26 an "apparent conversion" of the equipment, suggesting he is not
27 certain that the equipment was actually taken.

28 ///

1 The court notes that the schedules filed by the debtors do
2 not identify hundreds of thousands of dollars of business
3 equipment. Two versions of Schedule A/B were filed. Dockets 31
4 and 65. They identify \$100 of business personal property.

5 Nonetheless, the trustee found substantial unscheduled
6 business personal property. Some was sold in connection with the
7 real property in which the personal property was located. See
8 e.g., Dockets 409, 599, 622; 417, 659, 712; 425, 607, 626; 949,
9 995, 1015. Other personal property was auctioned pursuant to the
10 trustee's motion and this court's order. See Dockets 911, 920,
11 924.

12 As Mr. Samuel has never presented the court with specific
13 information concerning an alleged conversion or acquisition by
14 the trustee of personal property belonging to the estate, the
15 court has not failed to act. To the extent Mr. Samuel is
16 complaining about the sales authorized by the court, appeal not
17 recusal is the appropriate remedy.

18
19 III

20 Mr. Samuel's second motion for recusal will be denied. A
21 separate order will be entered.

22 Mr. Samuel is and has been free to retain whatever legal
23 counsel he selects.

24 His other complaints continue center on the appointment of
25 the trustee and the trustee's administration of the bankruptcy
26 estate, including the sales proposed by the trustee and approved
27 by the court.

28 ///

1 The record demonstrates that the court's decisions have been
2 sound, anchored in both law and fact, and are not the result of
3 bias or prejudice against the debtors or in favor of another.
4 Viewed objectively, a reasonable person would not conclude
5 otherwise and the court discerns no basis for recusal.

6 Dated: *23 August 2018*

By the Court



Michael S. McManus, Judge
United States Bankruptcy Court